

CAUSE NO. _____

HOUSTON MEDICAL GROUP

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IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

THE BOWERS LAW GROUP, PLLC
and JMW LAW GROUP, PLLC

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION,
REQUEST FOR DISCLOSURE AND RULE 193.7 NOTICE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, HOUSTON MEDICAL GROUP ("HMG" or "Plaintiff"), complaining of THE BOWERS LAW GROUP, PLLC ("Bowers") and JMW LAW GROUP, PLLC ("JMW"), collectively referred to as "Defendants," and for cause of action would respectfully show the following:

I.

DISCOVERY CONTROL PLAN

1. Discovery in this cause will be conducted under Level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure. This suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

II.

RULE 47 NOTICE

2. Plaintiff seeks monetary relief over \$1,000,000.00. The damages sought are within the jurisdictional limits of this Court.

III.

PARTIES

3. Plaintiff, HOUSTON MEDICAL GROUP, is a medical provider operating clinics in the greater Houston area, with its principal place of business in Harris County, Texas.

4. Defendant, THE BOWERS LAW GROUP, PLLC, is a Texas professional limited liability company authorized to conduct business in Texas, with its principal place of business in Harris County, Texas, and may be served with process by serving its registered agent, Paul Bowers, at 9894 Bissonnet Street, Suite 110, Houston, Harris County, Texas 77036 or wherever he may be found.

5. Defendant, JMW LAW GROUP, PLLC, is a Texas professional limited liability company authorized to conduct business in Texas, with its principal place of business in Harris County, Texas, and may be served with process by serving its registered agent, Joe Williams, at 8866 Gulf Freeway, Suite 384, Houston, Harris County, Texas 77017 or wherever he may be found.

IV. **JURISDICTION & VENUE**

6. This Court has jurisdiction over the parties, jurisdiction over the subject matter of this dispute, and jurisdiction to award all relief prayed for herein.

7. Venue is proper in Harris County, Texas because the contracts were entered into in, or all or a substantial part of the events giving rise to this cause of action occurred in Harris County, Texas.

V. **AGENCY**

8. Any time it is alleged in this pleading that a defendant did an act or failed to do any act or thing, it is meant that the defendant or his authorized, apparent, or ostensible agent(s), employee(s), or representative(s) did such act or failed to do such act or thing, thereby making the defendant liable.

VI.
FACTUAL BACKGROUND

9. Bowers and JMW are law firms in the Houston, Texas. On information and belief, JMW substituted for Bowers, or accepted referrals from Bowers, on some or all of Bowers' personal injury cases at some point between 2016 and 2018.

10. From June, 2013 through January, 2017, Defendants sought medical treatment from Plaintiff for their clients with personal injury claims or causes of action. Plaintiff undertook to provide necessary medical services to Defendants' clients with letters of protection¹ from Defendants. In return for Plaintiff's treatment of Defendants' clients and deferral of any demands for payment, Defendants promised to set aside the proceeds from any recoveries obtained as a result of each client's personal injury case in order to reimburse Plaintiff for services rendered. Because of the assurances made by Defendant in the letters of protection, Plaintiff continued to treat Defendants' clients and made no immediate demands for payment.

11. Plaintiff relied on Defendants' professional judgment that their clients' personal injury claims had value sufficient to pay Plaintiff for treatment, goods, and services provided, and that Khuu and/or ALG would collect payment for treatment, goods, and services Plaintiff provided to Defendants' clients from the respective tortfeasors or their insurers and remit the payments to Plaintiff.

12. Plaintiff fulfilled its promises, and upon completion of Defendants' clients' treatment, Plaintiff's charges for treatment, goods, and services provided to Defendants' clients

¹A Letter of Protection ("LOP") is a written promise made by a personal injury attorney to a medical provider, whereby the attorney promises to pay the medical provider's bills for treating the attorney's client, after the attorney settles the client's personal injury case and the attorney comes into possession of the settlement proceeds. LOP's are given by personal injury attorneys to healthcare providers to induce the healthcare providers to extend credit to the attorneys' clients – especially in cases where the client does not have health insurance but needs follow-up care and treatment of the injuries sustained in an accident caused by the negligence of a third party.

totaled \$1,423,290.76. Attached hereto as Exhibit "A" is a list of Defendants'² clients treated by Plaintiff under letters of protection from Khuu and/or ALG for whom Plaintiff has not been paid for treatment, goods, and services provided.

13. On information and belief, settlements for the claims of Defendants' clients treated by Plaintiff under letters of protection were obtained by Defendants from the respective tortfeasors. On information and belief, Defendants distributed the proceeds of those settlements to Defendants and their clients. However, despite the promises made to Plaintiff by Defendants in the letters of protection to promptly pay Plaintiff out of any recovery from Defendants' clients' personal injury cases, no such payments have been made.

14. Plaintiff has made numerous and repeated inquiries into the status of Defendants' clients' cases by both letter and telephone, none of which were answered by Defendant.

VII. **CAUSES OF ACTION**

15. Plaintiff would respectfully show that it is entitled to recover money from Defendants for breach of contract, quantum meruit, breach of fiduciary duty, fraud, money had and received, conversion, promissory estoppel, and/or unjust enrichment.

16. Plaintiff re-alleges sections I through VI above and incorporates the same herein by reference as if fully set forth here verbatim.

Breach of Contract

17. The letters of protection from Defendants promised payment for medical services rendered to Defendants' clients from the proceeds of settlements obtained for those clients by

² Some letters of protection came from Bowers only. (Those patients are listed on page 1 of Exhibit "A.") Others came from Bowers initially, followed by letters of protection from JMW when it substituted for Bowers or accepted referrals from Bowers. Still others came from JMW only. (The latter two types are listed on pages 2-7 of Exhibit "A.")

Defendants. Plaintiff, in reliance on Defendants' promises, rendered necessary medical treatment to Defendants' clients and provided Defendants with billing statements. Defendants used Plaintiff's bills as evidence of economic damages suffered by their clients in an effort to increase the settlement value of their clients' tort claims. Upon settling their clients' tort claims, Defendants paid Bowers or JMW, or both, contingency attorney's fees from the proceeds of the settlements which were enhanced by Plaintiff's bills. The unjustified refusal and failure by Defendants to cure the default and pay Plaintiff the past due balances for treatment rendered under the letters of protection constitutes material breaches of Defendants' contracts with Plaintiff.

18. As a result of Defendants' breach of agreements, Plaintiff has sustained monetary damages, which include, but are not limited to, all monies wrongfully realized by Defendants as a result of Defendants' improper conduct, as well as expenses incurred attempting to collect said debts.

Quantum Meruit

19. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiff would respectfully show that it is entitled to recover the usual, reasonable, and customary charges for its services provided to Defendants' clients based in quantum meruit. In this respect, Plaintiff provided necessary medical services to Defendants' clients with the express understanding that it would be compensated by Defendants for the same as its usual and customary rates. Also, Defendants accepted the services from Plaintiff without objection. Defendants accepted the benefits of the services rendered by Plaintiff to Defendants' clients and, as a result, thereby became liable to Plaintiff for the reasonable value thereof.

Breach of Fiduciary Duty

20. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiff would respectfully show that it is entitled to recover damages from Defendants for breach of fiduciary duty owed to Plaintiff. When Defendants received settlement funds on tort claims involving treatment under letters of protection given to Plaintiff, Defendants had a duty to hold those funds in trust until rival claims to the funds were resolved. Defendants breached the fiduciary duties owed to Plaintiff by failing to pay Plaintiff from the funds held in trust, by giving preference to others with claims against the funds held in trust (including Bowers and/or JMW), by self-dealing with respect to the funds held in trust, by not engaging in fair and honest dealings with Plaintiff, by violating the duties of candor, loyalty, utmost good faith, and full disclosure in their dealings with Plaintiff and the funds held in trust, and by failing to properly safeguard the funds held in trust. Defendants profited from their transactions with Plaintiff.

21. Alternatively, Defendants were the escrow agent for Plaintiff. Defendants breached the fiduciary duties owed to Plaintiff as its escrow agent by violating the duties of loyalty, full disclosure, and the duty to exercise a high degree of care to conserve escrow funds and pay only those entitled to receive them.

22. Plaintiff seeks actual damages in the amount of at least \$1,423,290.76 along with exemplary damages because Defendants' breach of fiduciary duty was intentional.

Fraud

23. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiff would respectfully show that it is entitled to recover damages caused by Defendants' fraudulent conduct. Defendants knowingly made false and material representations to Plaintiff during their course of business by making false promises regarding the payments to which Plaintiff was entitled for treatment rendered to Defendants' clients under the letters of protection.

Defendants intended that Plaintiff rely on such representations as contained within the letters of protection. Plaintiff, in fact, did rely on such false and material representations, and Plaintiff suffered injury therefrom.

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Money Had and Received

24. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiff would respectfully show that it is entitled to recover money held by Defendants. Defendants hold monies that legally, and in equity and good conscience, belong to Plaintiff. Plaintiff is the owner of \$1,423,290.76 held by Defendants by virtue of the letters of protection from Defendants.

Conversion

25. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiff would respectfully show that it is entitled to recover personal property, namely settlement funds from tort defendants, converted by Defendants. Presently, there are monies due and owing to Plaintiff from Defendants and Plaintiff has an immediate right to possession of this personal property. Defendants have wrongfully exercised dominion and control over these funds. Accordingly, Plaintiff has suffered damages in the amount of at least \$1,423,290.76 resulting from Defendants' wrongful exercise of dominion and control over settlement funds owed to Plaintiff for medical treatment provided to Defendants' clients.

Promissory Estoppel

26. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiff would respectfully show that it is entitled to enforcement of Defendants' promises in the letters of protection under the doctrine of promissory estoppel. Defendants promised to pay Plaintiff for medical treatment rendered to Defendants' clients from the settlements obtained by Defendants on those clients' tort claims. Plaintiff reasonably and substantially relied on the promises to its detriment by providing the medical treatment to Defendants' clients without full payment in advance. Defendants intended for Plaintiff to rely on their promises and Plaintiff's

reliance was foreseeable by Defendants. Injustice can be avoided only by enforcing Defendants' promises in the letters of protection given to Plaintiff.

Unjust Enrichment

27. Alternatively, but without waiving the above, and specifically insisting on the same, Plaintiff would respectfully show that it is entitled to recover from Defendants under the theory of unjust enrichment. Defendants are unjustly enriched by retaining the benefits of the services rendered by Plaintiff. Charges for medical treatment provided to Defendants' clients by Plaintiff under letters of protection from Defendants increased the economic damages suffered by Defendants' clients as a result of the accidents that formed the bases of the tort claims for which Defendants represented them. The greater the client's economic damages, the greater the value of her claim against the tort defendant, which in turn leads to larger settlements. Larger settlements equate to larger contingency fees collected by Defendants and referrals from happy clients. These larger fees and referrals are a windfall to Defendants, who are profiting at Plaintiff's expense.

VIII. **ATTORNEY'S FEES**

28. Due to Defendants' refusal to pay Plaintiff the monies due for necessary medical treatment provided to Defendants' clients under Defendants' letters of protection, Plaintiff has been required to employ the services of the undersigned attorneys. Plaintiff is entitled to recover reasonable attorney's fees pursuant to Texas Civil Practice & Remedies Code Section 38.001, which states as a matter of law that Plaintiff is entitled to recover its reasonable attorney's fees and costs pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001(8), which amount will be stated at such time as it can be determined, and for which amount Plaintiff prays for judgment.

IX.
RIGHT TO AMEND

29. Plaintiff specifically reserves the right to amend these pleadings upon pretrial discovery, order of the Court, or as counsel may agree.

X.
CONDITIONS PRECEDENT

30. All conditions precedent have occurred or are excused.

XI.
REQUEST FOR DISCLOSURE

31. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

XII.
RULE 193.7 NOTICE

32. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives notice that all documents produced by Defendants in response to discovery authenticate the documents for use in all pretrial and trial proceedings.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer and, that upon final trial hereof, Plaintiff have judgment against Defendants jointly and severally for:

- A. Plaintiff's actual damages;
- B. exemplary damages;
- C. reasonable and necessary attorney's fees incurred by Plaintiff in prosecuting its breach of contract and *quantum meruit* causes of action against Defendants, through trial and all levels of appeal, if necessary;

- D. prejudgment interest on actual damages at the highest legal rate;
- E. all costs of Court expended in the pursuit of this action;
- F. post-judgment interest at the highest legal rate; and
- G. such other and further relief, general or special, legal or equitable, to which Plaintiff may show itself entitled and which the Court deems appropriate.

Respectfully submitted,

SULLINS, JOHNSTON, ROHRBACH & MAGERS

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